

**FY22 / 23 Biennial Budget – L.D. 221**  
**Testimony of Aaron M. Frey, Office of the Attorney General**  
**Before the Joint Standing Committees on Appropriations and Financial**  
**Affairs and Judiciary**  
**March 1, 2021**

Good morning Senator Breen, Representative Pierce, and esteemed members of the Appropriations and Financial Affairs Committee, and Senator Carney, Representative Harnett, and esteemed members of Judiciary Committee. My name is Aaron Frey, and I have the privilege to serve as Maine’s Attorney General. I appreciate this opportunity to present the Office’s FY2022-2023 Biennial Budget and its new initiatives before you today.

The budget for our Office begins on Page A-72.

The Attorney General is the chief legal officer for the state. All litigation involving the State must be prosecuted or defended under the direction of the Attorney General unless the Attorney General otherwise approves in writing. The Office (a) appears in all civil actions and proceedings in which the State is a party; (b) directs the investigation and prosecution of homicides and other major crimes, including major drug cases and frauds against the State; (c) renders legal services to State offices, boards and commissions in matters relating to their official duties; (d) issues written opinions upon questions of law submitted pursuant to statute; (e) administers and enforces the State’s unfair trade practices and antitrust laws; (f) enforces proper application of endowments to public trusts and charities; and (g) consults with and advises the District Attorneys.

The Attorney General also serves as an ex-officio member on many State authorities and Commissions.

The Office of the Attorney General is organized by 5 M.R.S § 191 with the Attorney General as its chief executive. The Office includes the following divisions:

The Consumer Protection Division enforces state antitrust and consumer protection laws, the state merger statute and the Unfair Trade Practices Act. The Division also discharges the Attorney General's mandate to oversee charities and is responsible for the investigation and prosecution of the unauthorized practice of law. The Consumer Mediation Program uses trained volunteers to mediate consumer complaints, and the Lemon Law Arbitration Program administers the State's lemon law.

The Criminal Division has exclusive responsibility for the prosecution of homicide cases, handles numerous criminal appeals to the Supreme Judicial Court, advises the District Attorneys, and prosecutes major drug cases across the State; prosecutes white collar and financial crimes, welfare fraud, Medicaid fraud, computer crimes, tax crimes, and securities violations; and brings enforcement actions under the Maine Civil Rights Act.

The Investigation Division investigates fraud against the State and provides direct investigative services for other divisions in the Department. The Division is responsible for investigating use of deadly force by law enforcement, certain crimes against public officials, hate crimes, and financial exploitation of elders. The Division serves as a resource for other law enforcement agencies, participates in law enforcement training and conducts investigations for the Medical Board, the Osteopathic Board and the Tobacco and Substance Abuse programs.

Three divisions represent the offices within the Department of Health and Human Services (DHHS). The Child Protection Division represents the State in child protection matters. The Child Support Division represents the State in child support enforcement matters. The Health and Human Services Division represents all other offices within DHHS in complex litigation in state and federal courts, in contract and rule review, in administrative hearings and in providing routine legal advice.

The Division provides legal advice regarding a variety of topics including MaineCare, adult protection, guardianship, mental health, physical health, rules, contracts, licensing, and public benefit programs. The Division also represents DHHS in enforcement actions designed to protect public health and safety.

The Professional and Financial Regulation Division represents the Department of Professional & Financial Regulation, which includes the Bureaus of Insurance, Financial Institutions and Consumer Credit Protection, the Office of Securities and numerous professional and occupational licensing boards. It also represents the Maine Port Authority and the Property Tax Review Board and liquor and lottery regulation within the Department of Administrative and Financial Services.

The Natural Resources Division provides comprehensive legal services to the State's environmental and natural resource agencies. The Division represents these agencies in both affirmative and defensive litigation, including judicial enforcement actions and appeals of agency actions. It also provides legal advice to client agencies on a wide variety of issues including administrative decision-making, rulemaking, constitutional law, property law, contract law and enforcement of judgments, among others.

The Litigation Division handles tort claims against the State, tax litigation, and other complex litigation in state and federal courts. This Division also represents the Departments of Labor, Education, Corrections, Administrative and Financial Services, the Commission on Governmental Ethics and Election Practices, and the Secretary of State. This Division has primary responsibility for matters involving unfair labor practices, elections, state contracts and leases.

The Administrative Services Division provides staff support in the areas of human resources, budget, financial management and information technology and includes

front desk reception, the Civil Rights Team Project and the Victims' Compensation program.

The first program may be found on page A-73 under the heading ADMINISTRATION – ATTORNEY GENERAL 0310. This program name is rather a misnomer as the program encompasses all but a few of the activities of the Attorney General’s Office. This program is funded by a mix of General Funds, Federal Funds and Other Special Revenue Funds. The total headcount is 124 positions. The baseline budget for this program totals \$18,285,179 in FY22 and \$18,966,948 in FY23.

There are six (6) initiatives in the Administration – Attorney General program.

The first initiative within this program, found on page A-73, establishes one Secretary Associate Legal in the Natural Resources Division. Current personnel levels have one paralegal position supporting nine (9) Assistant Attorneys General, with many of those litigators absorbing their own administrative support functions. This position would take on those administrative functions, freeing up those attorneys to handle increased litigation needs for the Natural Resources Agencies. Natural Resources agencies that would receive the services of this position were consulted in the proposal of this position and have agreed to this request for its funding.

The second initiative within this program, also found on page A-73, continues a reduction of funding from the FY 2021 supplemental budget due to the return of a leased Central Fleet vehicle by the Investigations Division.

The third initiative within this program, also found on page A-73, Establishes one Assistant Attorney General position in the Litigation Division dedicated to Workers' Compensation litigation. Historically, Workers’ Compensation litigation was attended to by attorneys within the Office of the Attorney General, but was transitioned to outside counsel in recent past. Analysis shows that returning this

work in-house could save over \$100,000 annually. The work of this position would focus on litigation originating in Central and Southern Maine. For logistical purposes, Northern Maine would continue to be served by outside counsel for the foreseeable future.

The fourth initiative within this program, found on page A-74, establishes one Paralegal position in the Litigation Division dedicated to Workers' Compensation litigation. This paralegal position would support the requested Assistant Attorney General in the establishment of a Worker's Compensation team that could save over \$100,000 annually by reducing the use of outside counsel in Central and Southern Maine. For logistical purposes, Northern Maine would continue to be served by outside counsel for the foreseeable future.

The fifth initiative within this program, also found on page A-74, establishes one Secretary Legal position in the Litigation Division dedicated to Workers' Compensation litigation. This Secretary Legal position, with the requested Assistant Attorney General and Paralegal positions, completes the legal staff that could save over \$100,000 annually by reducing the use of outside counsel in Central and Southern Maine. For logistical purposes, Northern Maine would continue to be served by outside counsel for the foreseeable future.

The sixth initiative within this program, also found on page A-74, provides funding for Department of Administrative and Financial Services, Office of Information Technology (OIT) rate increases, computer replacements and other information technology needs. This initiative affects various programs, so will be cited again as we continue today.

This concludes the review of the baseline budget and the initiatives for the ADMINISTRATION – ATTORNEY GENERAL 0310 program.

The next program starts on Page A-75 under the heading CHIEF MEDICAL EXAMINER – OFFICE OF 0412. The Office of Chief Medical Examiner is headed by the Chief Medical Examiner, Dr. Mark Flomenbaum, who is appointed by the Governor for a term of seven years. The Office is responsible for determining the cause and manner of death in all deaths due to other than natural disease or that cannot be certified by a private attending physician. The goal of the Office is to provide thorough investigations and support to the judicial system, public health and public safety. The Office monitors cases to identify public health-related concerns and to report contagious and infectious disease deaths to the Maine Center for Disease Control and Prevention. Additionally, the Office continuously conducts surveillance for drugs, elder and child abuse and neglect, and other public health matters related to violent deaths and suicides. Medical Examiner cases include: deaths due to trauma or poisoning, unexplained deaths of children under the age of three, and deaths occurring under suspicious circumstances. The Office needs a budget that allows for supplying timely reports to government agencies, families and other interested parties on the circumstantial and medical factors that caused a death for the purposes of prosecution, departmental action, estate settlement, and statistical information for governmental recordkeeping and policy decisions.

The Office of Chief Medical Examiner has a headcount of 13 positions and a total baseline budget of \$3,117,378 in FY22 and \$3,177,620 in FY23. There are five (5) initiatives for this program.

Found on page A-75, the first initiative continues a reduction of funding from the fiscal year 2021 supplemental budget for contract services by disencumbering a contract for autopsy services. The Office of the Attorney General's contracted provider is not allowing the Office of Chief Medical Examiner autopsies to be



completed during the pandemic, and the pathologist performing the service will be retiring.

The second initiative, also found on page A-75, continues a reduction of funding from the FY 2021 supplemental budget due to the return of a leased Central Fleet vehicle.

Still on page A-75, the third initiative continues a reduction of funding from the FY 2021 supplemental budget for cell phone services.

The fourth initiative, the last on page A-75, provides Personal Services to allow for approved premium overtime and standby pay for the Medical Examiner Assistant positions based on labor committee considerations. Meetings between employees, management, and Bureau of Human Relations - Office of Employee Relations have resulted in modified overtime and standby allowances for this classification in the Office of the Chief Medical Examiner.

The fifth initiative, found on page A-76, provides funding for Department of Administrative and Financial Services, Office of Information Technology (OIT) rate increases, computer replacements and other information technology needs. As this initiative affects various programs, it is cited on pages A-74, A-76, A-77, A-79, A-80, and A-82.

This concludes the review of the baseline budget and the initiatives for the CHIEF MEDICAL EXAMINER – OFFICE OF 0412 program.

The next program is found on Page A-77 under the heading CIVIL RIGHTS 0039. The mission of the Civil Rights Team Project (CRTP) is to increase the safety of elementary, middle, and high school students by reducing bias-motivated behaviors and harassment in schools. There are Civil Rights Teams in over 180 Maine schools and training is provided to thousands of students and faculty.

The Civil Rights Team Project trains, encourages and empowers high school, middle school and elementary school students to be leaders within their school communities on issues relating to confronting bias, prejudice and harassment. Faculty in-service trainings increase the knowledge and responsiveness of faculty and administrators to these concerns. The program works with local police and schools to foster collaboration in addressing incidents of bias and harassment and increase awareness of parents and community members. The goal of the program is to improve the school experience for members of targeted groups (racial, religious, national origin, sexual orientation, etc.)

The Civil Rights program has a headcount of 2 positions and a baseline budget of \$282,782 in FY22 and \$291,870 in FY23.

There is one (1) initiative in this program. Found on page A-77, it provides funding for Department of Administrative and Financial Services, Office of Information Technology (OIT) rate increases, computer replacements and other information technology needs. As this initiative affects various programs, it is cited on pages A-74, A-76, A-77, A-79, A-80, and A-82.

This concludes the review of the baseline budget and the initiatives for the CIVIL RIGHTS 0039 program.

The next program is found on Page A-78 under the heading DISTRICT ATTORNEYS SALARIES 0409. The State is divided into eight prosecutorial Districts, each headed by an elected District Attorney. All eight District Attorney offices are responsible for the prosecution of the majority of all criminal offenses occurring in their district, with the exception of homicides, as well as traffic infractions and some civil violations. This caseload is carried statewide with a staff of 97 Assistant District Attorneys and 8 elected District Attorneys. When traffic infractions and civil violations are factored in, as well as probation revocations and appeals to the Superior Court and Law Court, each Assistant District Attorney handles caseloads averaging 600 cases per person.

Each District Attorney office spends many hours preparing criminal complaints, motions, memoranda of law, legal briefs, and other pleadings. A great deal of time is spent reviewing thousands of police reports in order to determine whether sufficient evidence exists for the issuance of criminal complaints. Time consuming activities such as trial preparation and hearings, Grand Jury presentations, meetings with police officers, witnesses and victims, as well as being on call 24-hours-per-day, keep all prosecutors extremely busy. In many prosecutorial districts, District Attorneys cover courts in several distant locations. In addition, all District Attorney offices sponsor police training classes, offering continuing legal education to law enforcement in order to enhance the quality of investigations to achieve successful prosecutions.

The baseline budget for the DISTRICT ATTORNEY SALARIES program, which does not include All Other Costs, which are covered by the various counties, is \$12,844,650 in FY22 and \$13,428,326 in FY23.

There are no initiatives in the District Attorney Salaries program.

This concludes the review of the baseline budget for the DISTRICT ATTORNEYS SALARIES 0409 program.

The next program is found on Page A-79 under the heading FHM ATTORNEY GENERAL 0947. This program provides funding to enforce the Tobacco Manufacturer's Act and the Tobacco Distributor's Act.

The program has a headcount of one position. The baseline budget in this program is \$130,625 in FY22 and \$135,923 in FY23.

There is one (1) initiative in the FHM ATTORNEY GENERAL 0947 program.

Found on page A-79, this initiative provides funding for Department of Administrative and Financial Services, Office of Information Technology (OIT) rate increases, computer replacements and other information technology needs. As this initiative affects various programs, it is cited on pages A-74, A-76, A-77, A-79, A-80, and A-82.

This concludes the review of the baseline budget and the initiatives for the FHM ATTORNEY GENERAL 0947 program.

The next program is found on Page A-80 under the heading HUMAN SERVICES DIVISION 0696. This program is broken down into three divisions within the Office. The Child Support Enforcement Division represents the Department of Health and Human Services (DHHS) in the area of child support enforcement. The Child Protection Division represents DHHS in the area of child protection. The work of these two divisions is done out of four offices-Portland, Augusta, Bangor, and Caribou. Presently, attorneys, paralegals, and secretaries in these two areas have the most persistent and heavy caseloads of any Divisions in the Office of the Attorney General. The Health and Human Services Division provides legal representation for every other program in DHHS, including legal work for the MaineCare program, involuntary mental health commitment hearings, defense of lawsuits against the Department and its employees, public guardianship/conservatorship issues, estate recovery, licensure of homes for both adults and children, enforcement of the State's health laws, enforcement of adult protective laws, representing DHHS's interest in federal benefits programs such as MaineCare and TANF, and providing legal counsel in the AMHI and Community Consent Decree cases. The program has a headcount of eighty (80) positions. The baseline budget in this program is \$10,576,996 in FY22 and \$11,006,722 in FY23.

There are five (5) initiatives in the HUMAN SERVICES DIVISION program. Two are submitted in direct correlation to the increasing workload for the Department of Health and Human Services Child Protection Division in the Office of Child and Family Services. With the dramatic increase in Central Intake and new assessments assigned to field staff come greater numbers of court cases being filed and litigated. Therefore, the substantial increase in the Department's workload and workforce for child protection services directly correlates to workload for the Office of the Attorney General's Child Protection AAGs and administrative staff.

Found on page A-80, the first and second initiatives establishes one Assistant Attorney General position, while the other continues one Assistant Attorney General position established by Financial Order in June 2020.

Due to an increasing number of child abuse and neglect reports and corresponding assessments, the Department of Health and Human Services (DHHS) has significantly increased the number of child protective services social workers. In the past two years, the Office of Child and Family Services (OCFS) has seen a dramatic increase in calls to Central Intake and new assessments assigned to field staff. This has resulted in greater numbers of court cases being filed and litigated. The American Bar Association has recommended caseload limits of 60 trial court cases per trial attorney for this type of state agency representation. In Maine, the caseloads far exceed the American Bar Association recommendations, with each AAG carrying an average of 100 cases prior to DHHS's 2018 staffing increase. The Department of Health and Human Services (DHHS) has significantly increased the number of child protective cases it has filed in court. As mentioned, this increase of approximately 30% growth in the Department's workforce for child protection, directly correlates to the workload for the Office of the Attorney General and its dedicated team of Child Protection Assistant Attorneys General (AAG) and their administrative staff. Child Protection AAGs handle child protection cases for over 2,200 children in DHHS custody, as well as over 100 others in familial custody arrangements or transition to adulthood between ages 18 and 21. These AAGs appear in court in excess of 4000 times each year, and conduct hundreds of trials, all set on a priority or expedited court scheduling track. Child Protection AAGs also handle an average of 80 appeals annually in the Maine Supreme Court and some in the Superior Court. These AAGs additionally manage numerous other core responsibilities including legal training of Office of Child and Family Service

(OCFS) staff, advising OCFS daily on case evidence collection, evidence management, service of process, handling threats to child welfare staff, collaboration with tribal child welfare, interstate cases, bar trainings and active participation in child abuse prevention, including membership in statutorily required multidisciplinary child welfare panels, and much more. In sum, DHHS is responding to a need to increase staffing, assess more families, and file more cases in the trial courts, which results in corresponding increases in trial court litigation and appellate caseloads and the need for more legal services.

The third initiative, also on page A-80, Continues one part-time Research Assistant MSEA-B position assigned to the DHHS Child Support Division. The previously-mentioned increases in child protective cases filed in court has led to additional need for Assistant Attorneys General's time and related support staff to effectively address the child welfare backlog and support the increased filings. As a result, a Research Assistant MSEA-B position previously funded equally by DHHS Child Protective Services and DHHS Child Support has been transferred to 100% Child Protective Services. DHHS has agreed to this additional funding, but this leaves a need for a part-time Child Support position.

The fourth initiative on page A-80 provides funding for Department of Administrative and Financial Services, Office of Information Technology (OIT) rate increases, computer replacements and other information technology needs. As this initiative affects various programs, it is cited on pages A-74, A-76, A-77, A-79, A-80, and A-82.

The fifth initiative, found on page A-81, provides funding for the approved reorganization of one Secretary Legal position to one Secretary Associate Legal



position. The reclassification is necessary due to the complexity of tasks being performed and the required ongoing need for this level of support.

This concludes the review of the baseline budget and the initiatives for the HUMAN SERVICES DIVISION 0696 program.

The next program is found on Page A-82 under the heading VICTIMS' COMPENSATION BOARD 0711. This program offers financial reimbursement for losses suffered by victims of violent crime and their families and reimburses hospitals for sexual assault. Funding for this program comes from assessments levied against perpetrators as well as a federal grant.

This program has a headcount of 3 positions and a baseline budget of \$1,069,006 in FY22 and \$1,078,799 in FY23.

There is one (1) initiative for this program in this budget document.

Found on page A-82, the initiative provides funding for Department of Administrative and Financial Services, Office of Information Technology (OIT) rate increases, computer replacements and other information technology needs. As this initiative affects various programs, it is cited on pages A-74, A-76, A-77, A-79, A-80, and A-82.

This concludes the review of the baseline budget and the initiatives for the VICTIMS' COMPENSATION BOARD 0711 program.

This concludes the review of the Office of the Attorney General's FY2022-2023 Biennial Budget and its new initiatives before you today. I would be happy to answer any questions that you may have.

Thank you.